

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JIM NOVOTNEY,	)	
	)	
Plaintiff,	)	
	)	No. 22 CV 3439
v.	)	
	)	
WALGREEN CO.,	)	
	)	
Defendant.	)	

**MOTION TO DISMISS**

Defendant Walgreen Company (“Walgreens”), pursuant to Fed. R. Civ. P. 12(b)(6), moves to motion to dismiss the Complaint, and, in support of that motion states as follows:

1. Plaintiff’s Complaint asserts that the label on Walgreen’s branded hydrogen peroxide is fraudulent and misleading because it describes antiseptic uses for the product that Plaintiff claims are not supported by “credible scientific and medical evidence.”

1. Plaintiff’s claims are preempted by the Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 301 *et seq.*, because the product is FDA approved for the described antiseptic uses and the product’s label is entirely consistent with FDA labeling requirements.

2. Plaintiff’s assertion of a putative ten-state class fails to allege non-Illinois claims and is contrary to Seventh Circuit precedent *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1018 (7th Cir. 2002).

3. Even if not preempted, Plaintiff's fraud, consumer fraud, and negligent misrepresentation claims do not comply with Rule 9(b) and demonstrate that *reasonable* consumers could not be misled by any claimed misrepresentations because the product is approved by the FDA precisely for the uses that Plaintiff identifies. Plaintiff's claim for unjust enrichment fails because it duplicates the consumer fraud claim. And, Plaintiff's warranty claims fail because of the absence of allegations identifying an express warranty and the absence of allegations of notice and the opportunity to cure.

**WHEREFORE**, for all the reasons stated in Walgreen's accompanying memorandum of law, Plaintiff's complaint should be dismissed with prejudice.

**DEFENDANT WALGREEN CO.,**

By: /s/ Christopher Carmichael  
One of its Attorneys

Jonathan L. Lewis  
Christopher M. Schafbuch  
**LOWENSTEIN SANDLER LLP**  
2200 Pennsylvania Ave. NW, Suite 500  
Washington, DC 20037  
Tel: 202.753.3824  
[jlewis@lowenstein.com](mailto:jlewis@lowenstein.com)  
[cschafbuch@lowenstein.com](mailto:cschafbuch@lowenstein.com)

Christopher W. Carmichael  
**HENDERSON PARKS, LLC**  
140 S. Dearborn St., Suite 1020  
Chicago, Illinois 60603  
Tel: (312) 262-2900  
[ccarmichael@henderson-parks.com](mailto:ccarmichael@henderson-parks.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that on **November 7, 2022**, the foregoing **Motion to Dismiss** was electronically filed with the Clerk of the United States District Court for the Northern District of Illinois by filing through the CM/ECF system, which served a copy of the foregoing upon all counsel of record

By: /s/ Christopher Carmichael